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July 14, 2015

Barry Rehurek
American Recycling LLC
1590 East Chase Ave
El Cajon, California 92020

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
American Recycling**

Dear Mr. Rehurek,

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Barry Boyd Rehurek's (DBA American Recycling) and American Recycling LLC's failure to enroll in the State Water Resources Control Board Water Quality Order No. 97-03-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit). This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for American Recycling (Facility), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Barry Boyd Rehurek's (DBA American Recycling)'s Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from American Recycling's ongoing illegal activities are discharged, namely Otay River, the Tijuana River, Oneonta Slough, San Diego Bay and the Pacific Ocean. The public and members of CERF use these receiving waters to fish, sail, boat, stand up paddle board, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by American Recycling affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by American Recycling's Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

II. Storm Water Pollution and the General Industrial Permit

A. Duty to Enroll and Unpermitted Discharge

The Clean Water Act prohibits the "discharge of any pollutant," unless otherwise allowed by permit. 33 U.S.C. § 1311(a). A NPDES permit must be issued before any pollutant is discharged into Waters of the United States from a point source. 33 U.S.C. § 1342(1). "Any discharge of pollutants not allowed by an NPDES permit is illegal." (*San Francisco BayKeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153 (9th Cir. 2002)). Under the Act, an NPDES permit is required when a discharger has (1) discharged (2) a pollutant (3) to waters of the United States (4) from a point source. (33 U.S.C. §§ 1311(a), 1342(a); see also *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993)).

Coverage under the General Industrial Permit for American Recycling (SIC 5093) is mandatory. In order to obtain coverage under the Permit, "each facility operator must submit a Notice of Intent (NOI)." (Permit, p. 1). In 2015 City of San Diego Storm Water staff/consultants inspected your facility and confirmed that coverage is required. Nonetheless, a NOI has not been filed for the Facility. The Facility has thus been operating in violation of the Clean Water Act since adoption of the Permit in 1997. See *Humboldt Baykeeper v. Union Pac. R.R. Co.*, 2006 U.S. Dist. LEXIS 88984 (N.D. Cal.2006) ["[a]ny person who discharges or proposes to discharge pollutants ... and who does not have an effective permit, except persons covered by general permits ..., must submit a complete application to the Director", citing 40 CFR § 122.21]).

Thus, Barry Boyd Rehurek's (DBA American Recycling) failure to file a Notice of Intent and your continued unpermitted discharge of pollutants constitute separate and distinct violations of the Clean Water Act. (*Humboldt Baykeeper, supra*, at p. 88984 [claim for unpermitted discharge of pollutants and another for a failure to obtain a NPDES permit were two claims with "distinct legal viability."]).

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

CERF's action will seek all remedies available under the Clean Water Act §1365(a)(d). CERF will seek to enjoin the illegal discharges from the American Recycling Facility. CERF will also seek the maximum penalty available under the law which is \$37,500 per day.

CERF may further seek a court order to prevent Barry Boyd Rehurek (DBA American Recycling) from discharging pollutants. A strong or substantial likelihood of success on the merits of CERF's claim exists, and irreparable injuries to the public, public trust resources, and the environments will result if Barry Boyd Rehurek's (DBA American Recycling) continues its unpermitted discharge into Otay River, the Tijuana River, Oneonta Slough, San Diego Bay and

the Pacific Ocean.

Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

IV. Conclusion

CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

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CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP LLP


Marco A. Gonzalez



Livia Borak
Attorneys for
Coastal Environmental Rights Foundation

CC:

Jared Blumenfeld, Region 9 Administrator Alexis Strauss, Deputy Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA, 94105	Dave Gibson, Executive Officer Catherine Hagan, Staff Counsel San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, CA 92108-2700
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